

Application No.: 10/763,012
Filing Date: January 22, 2004

REMARKS

The April 30, 2009 Office Action rejects Claims 1, 14, 27 and 40 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 10, 19, 43, 68, 93, 96, and 98 of co-pending Application No. 10/484,541; and rejects Claims 1-52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,944,584 to Tenney, et al. ("Tenney") in view of U.S. Patent Application Publication No. 2004/0216044 to Martin ("Martin"). Applicants request reconsideration of the rejections in view of the following comments.

Prior Information Disclosure Statement

Applicants wish to draw the Examiner's attention to an Information Disclosure Statement that was mailed on March 6, 2009, and is in the PTO's PAIR system with an OIPE stamp date of March 10, 2009.

Information Disclosure Statement

Applicants note the filing of an Information Disclosure Statement concurrently with the filing of this response.

Double Patenting Rejection

The Examiner rejects Claims 1, 14, 27 and 40 on the grounds of the judicially-created, nonstatutory obviousness-type doctrine of double patenting over Claims 1, 10, 19, 43, 68, 93, 96, and 98 of U.S. Patent Application No. 10/484,541.

Without acquiescing to the Examiner's double patenting rejection, Applicants submit herewith a Terminal Disclaimer to overcome the obviousness-type double patenting rejection and to expedite issuance of the application. Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of Claims 1, 14, 27 and 40.

Discussion of Rejection of Claims 1-52 under 35 U.S.C. § 103(a)

The Office Action rejects Claims 1-52 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,944,584 to Tenney, et al. ("Tenney") in view of U.S. Patent Application Publication No. 2004/0216044 to Martin ("Martin").

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In rejecting Claims 1, 14, 27 and 40, the Office Action acknowledges that “Tenney doesn't expressly disclose permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed,” and relies on Martin to provide the missing limitations.

Applicants respectfully submit that the Martin reference (U.S. Patent Application Publication No. 2004/0216044) is not available as prior art to the present application as explained in further detail below.

The Martin reference (U.S. Patent Application Publication No. 2004/0216044) published on October 28, 2004, which is after the effective filing date of the present application. In addition, in the event that the Office Action is using the filing date of the Martin reference under a 35 U.S.C. § 103(a)/102(e) rejection, Applicants note that the Martin reference is not an application “by another” as required under 35 U.S.C. § 102(e) and further has the *same* effective filing date as the present application. Applicants direct the Examiner to M.P.E.P. § 706.02(VI)(A), which states:

If the application is a continuation or divisional of one or more earlier U.S. applications or international applications and if the requirements of 35 U.S.C. 120 and 365(c), respectively, have been satisfied, the effective filing date is the same as the earliest filing date in the line of continuation or divisional applications.

In the present case, both the Martin reference and the present application are continuation applications claiming priority under 35 U.S.C. § 365(c) and 35 U.S.C. § 120 to the same national phase (10/484,541) of a PCT application (PCT/US02/023816, filed July 26, 2002), which in turn claims priority (under 35 U.S.C. § 119(e)) to a U.S. provisional application (60/308,052, filed July 26, 2001).

Since the Martin reference and the present application have the same effective filing dates, the Martin reference is not prior to the present application and is not available as prior art.

Thus, since the Office Action acknowledges that Tenney “doesn't expressly disclose” all the limitations with respect to Claims 1, 14, 27 and 40, and since the Martin reference is not available as prior art, all the claim limitations are not taught or suggested by the prior art, and a *prima facie* case of obviousness has not been established.

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Dependent Claims 2-13, 15-26, 28-39, 41-52 depend from and further define Claims 1, 14, 27 and 40, respectively. Applicants respectfully submit that the rejections to dependent Claims 2-13, 15-26, 28-39, 41-52 are moot for at least the reasons described for Claims 1, 14, 27 and 40, respectively, and Applicants accordingly request allowance of Claims 2-13, 15-26, 28-39, 41-52.

In order "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Accordingly, Applicants request the Examiner to withdraw the rejections of Claims 1-52 under 35 U.S.C. § 103(a) as unpatentable over Tenney in view of Martin.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following co-pending applications of the present application's assignee, which have substantially the same specification as the present application.

Docket No.	Serial No.	Title	Filed
IRI.001NP	10/484,541	SYSTEM AND PROCESS FOR GATHERING, RECORDING AND VALIDATING REQUIREMENTS FOR COMPUTER APPLICATIONS	2004-01-22

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IRI.001C3C1	11/671,331	SYSTEMS AND METHODS FOR DEFINING A SIMULATED INTERACTIVE WEB PAGE	2007-02-05
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Rescission of Any Prior Disclaimers and Request to Revisit Art

The claims of the present application are different and possibly broader in scope than the claims pursued in the parent application(s). To the extent any prior amendments or characterizations of the scope of any claim or referenced art could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicant hereby rescinds and retracts such disclaimer. Accordingly, the references previously considered in the parent application(s) may need to be re-visited.

SUMMARY

In view of the foregoing amendments and remarks, Applicants respectfully request the Examiner to withdraw the rejections of the claims under 35 U.S.C. § 103(a). Applicants further request the Examiner to allow Claims 1-52 and to pass the present application to the issue process.


If there is any further impediment to the prompt allowance of the present application, Applicants request the Examiner to call the undersigned attorney of record at 310-407-3466 or at the telephone number listed below to resolve any such impediment.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 27, 2009

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